

## REMARKS

Reconsideration of the present application is respectfully requested.

### **Amendments**

#### Amendments to the Claims

Claims 1, 15, 23, 26, 32, 34, 37, and 49 have been amended. Claim 58 has been added to broaden the scope of the claimed invention. No new matter has been added. The claims have been amended to incorporate subject matter supported in the specification at paragraph 47, on pages 21 and 22 of the specification as originally filed.

### **Rejections**

#### Rejections under 35 U.S.C. § 102(e)

##### Claims 1-4, 6, 8-19, 21-37, 39-49, 51, 52, and 57

Claims 1-4, 6, 8-19, 21-37, 39-49, 51, 52, and 57 stand rejected under 35 U.S.C. § 102(e) based on U.S. Patent no. 6,986,018 of O'Rourke et al. ("O'Rourke"). Applicant does not admit that O'Rourke is prior art and reserves the right to swear behind O'Rourke in a future response if Applicant deems it appropriate to do so.

O'Rourke discloses a cache server that redirects a client to a different cache server when requested content is unavailable on the cache server. In contrast, claim 1 as amended recites a caching device that determines whether a host is available, where the host is available if the host responds to a connection attempt within a timeout period. O'Rourke does not mention

timeout periods for connection attempts, much less a caching device that determines if a host responds to a connection attempt within a timeout period. O'Rourke thus fails to teach all limitations of amended claim 1.

Therefore, Applicant submits that the invention as claimed in claim 1 is not anticipated by O'Rourke under 35 U.S.C. §102(e). Amended independent claims 15, 23, 26, 32, 34, 37, and 49 and new independent claim 58 include similar limitations as amended claim 1 and are also not anticipated by O'Rourke. Dependent claims 2-4, 6, 8-14, 16-19, 21, 22, 24, 25, 27-31, 33, 35, 36, 39-48, 51, 52, and 57 are also not anticipated by O'Rourke. Accordingly, Applicant respectfully requests withdrawal of the rejections.

## Conclusion

Claims 1-4, 6, 8-19, 21-37, 39-49, 51, 52, 57, and 58 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Kerry Liang at (408) 720-8300.

## Deposit Account Authorization

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

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